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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **JAN 30 2012**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a financing/leasing business. It seeks to employ the beneficiary permanently in the United States as an associate manager. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary had the required qualifications for the proffered job. The director denied the petition accordingly.

In pertinent part, section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

Review of the record shows that the petition has not been properly filed, and therefore there is no legitimate basis to continue with this proceeding.

The Form I-140 petition identifies [REDACTED] as the employer and the petitioner. The regulation at 8 C.F.R. § 103.2(a)(2) requires that the petitioner sign the petition. In this instance, no employee or officer of [REDACTED] signed Form I-140. The only signature on that form is that of [REDACTED] counsel for the petitioner. [REDACTED] signed Part 8 of the Form I-140, "Petitioner's Signature," thereby attempting to file the petition on behalf of the actual United States employer.¹ However, the regulations do not permit [REDACTED] who is not the petitioner, to sign Form I-140 on behalf of a United States employer.

The regulation at 8 C.F.R. § 204.5(c) states:

¹ Counsel submits a "Power of Attorney Given By [REDACTED] The power of attorney was signed by [REDACTED] in his capacity as [REDACTED] of the petitioner, on July 19, 2007. The power of attorney states that the petitioner appointed [REDACTED] as attorney-in-fact to

prepare and sign, on behalf of [REDACTED], forms I-140, Approved Labor Certification, and related forms and/or documents to Employment Immigration Petition for [REDACTED]

Filing petition. Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 103.2(a)(2) states:

Signature. An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the [USCIS] is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

There is no regulatory provision that waives the signature requirement for a petitioning United States employer or that permits a petitioning United States employer to designate an attorney or accredited representative to sign the petition on behalf of the United States employer. The petition has not been properly filed because the petitioning United States employer, [REDACTED] Leasing USA, Inc., did not sign the petition. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition.

The petition has not been properly filed by a United States employer.² Therefore, we must reject the appeal.

The AAO notes that an AAO investigator spoke with the President of the petitioner who confirmed that the beneficiary has resigned from employment with the petitioner and returned to Korea. Therefore, the appeal is also moot as the job offer is no longer valid.

ORDER: The appeal is rejected.

² While the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp.2d 800, 803 (E.D. La. 2000), *affd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).